

22. EQUAL EMPLOYMENT OPPORTUNITY

BASIC REQUIREMENT

The grantee must ensure that no person in the United States shall on the grounds of race, color, religion, national origin, sex, age, or disability be excluded from participating in, or denied the benefits of, or be subject to discrimination in employment under any project, program, or activity receiving Federal financial assistance under the Federal transit laws. (Note: EEOC's regulation only identifies/recognizes religion and not creed as one of the protected groups.)

AREAS TO BE EXAMINED

1. *EEO Program*
2. *Oversight of Subrecipients and Contractors*
3. *EEO Complaints/Lawsuits*
4. *Title I of ADA*

REFERENCES

1. [49 CFR 27](#), "Nondiscrimination On The Basis Of Disability In Programs And Activities Receiving Or Benefiting From Federal Financial Assistance"
2. [FTA Circular 4704.1](#), "Equal Employment Opportunity Program Guidelines for Grant Recipients"
3. [Federal Register](#): December 14, 2005 (Volume 70, Number 239, pp.74087-74100) "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons"

USEFUL WEB LINKS

[FTA EEO page](#)

[Disability.gov Workplace Accommodations](#)

QUESTIONS FOR THE REVIEW

1. *Has FTA conducted an EEO Compliance Review during the past two Federal fiscal years? If yes, when was the site visit? Is a review scheduled for the current fiscal year?*

EXPLANATION

As part of its project oversight functions, FTA periodically conducts EEO reviews of selected grantees.

Even if such a review is scheduled for the current Federal fiscal year or has been recently conducted, all questions in this section are still reviewed. If an EEO review has been recently conducted, obtain a copy of the most recent report (draft or final) for input into the review.

REFERENCE

Input to review

SOURCES OF INFORMATION

Prior to conducting the desk review, the reviewer will examine OTrak to determine if an EEO review has occurred or has been scheduled and to analyze findings and corrective actions from completed EEO reviews. The regional civil rights officer (RCRO) will also have information on EEO review activities. Reports may be available at the regional office or from headquarters during the desk review.

DETERMINATION

None

SUGGESTED CORRECTIVE ACTION

None

2. *Does the grantee meet the threshold for submission of a formal EEO program?*
 - a. *If no, skip to Question 5.*
 - b. *If yes, has the grantee's EEO program been approved by FTA?*
 - *If yes, when does it expire?*
 - *If no, provide an explanation.*

EXPLANATION

A formal EEO program is required of any grantee that both employed 50 or more transit-related employees (including temporary, full-time or part-time employees) and received in excess of \$1 million in capital or

operating assistance or in excess of \$250,000 in planning assistance in the previous Federal fiscal year. The program requirements detail what must be included, such as designation of personnel responsibilities, a workforce analysis (including an identification of areas of underutilization), goals and timetables, an assessment of past employment practices, proposed remedies for problem areas, and a monitoring and reporting system. Program updates are required every three years.

REFERENCE

[FTA C 4704.1](#), Ch. II, Section 2 and 5; Ch. III

SOURCES OF INFORMATION

The RCRO's files will be reviewed for a copy of the most recently submitted program. TEAM-Web, RCRO correspondence, or RCRO tracking information for program approval and expiration date also will be examined.

DETERMINATION

The grantee is deficient if it meets the threshold and has not submitted a program. The grantee is deficient if the current EEO program has expired and it has not submitted a program update or requested and received an extension for submitting a program update.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to submit to the FTA RCRO the required EEO program or program update.

3. *Who is responsible for ensuring that EEO obligations are fulfilled? Is the position of the current EEO officer correctly identified in the most recent EEO program submission? To whom does this individual report for EEO matters? Is this a collateral duty assignment? If yes, do potential conflicts exist and how are they identified and resolved?*

EXPLANATION

The importance of an EEO program is indicated by the individual named to manage the program and the authority they possess. The EEO officer should be identified in the grantee's EEO program submission. The grantee's chief executive officer (CEO) should designate an EEO officer and adequate staff to administer the EEO program. The EEO officer should be an executive and must report directly to the CEO.

The EEO officer should be identified by name in all internal and external communications regarding the grantee's EEO program, including EEO program submissions.

Care should be taken to avoid conflicts when assigning responsibility for administering the EEO program as a collateral duty assignment. The EEO officer should serve as a check and balance on employment practices. Since one of the EEO officer's minimum responsibilities includes reporting periodically to the CEO on the progress of each unit in relation to the agency's EEO goals, conflicts of interest could arise if the EEO officer is located in the human resources or administrative office. For example, many of the employment practices assessed for goal attainment (see list under the explanation section of Question 4) may be, in large part, the responsibility of the human resource department.

REFERENCE

FTA C 4704.1, Ch. II, Section 1; Ch. III, Section 2.c

SOURCES OF INFORMATION

EEO program submissions will be reviewed for the name and reporting relationship of the EEO officer. The RCRO will be consulted for any indications of past problems with staffing. Current staff assignments will be confirmed in discussions at the site visit. An organization chart can indicate reporting relationships. A job description for the EEO officer can confirm responsibilities and reporting relationships.

DETERMINATION

The grantee is deficient if the EEO officer does not report directly to the CEO. The EEO officer should have clear reporting relationships with no conflicts of interest. The grantee is deficient if the position of the current EEO officer differs from that in the approved EEO program submission and the grantee has not communicated this to the RCRO for review.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to submit to the FTA RCRO evidence of corrective actions taken to designate EEO responsibilities properly. The grantee may need to change reporting relationships or assignment of responsibilities.

4. *Were EEO goals met during the past three years? Was an explanation given for goals that were not met? What are the grantee's current areas of underutilization? What is the grantee doing to address this underutilization?*

EXPLANATION

Goals and timetables are management tools to assist in the optimum utilization of human resources. For grantees that meet the formal program threshold, specific and detailed percentage and numerical goals with timetables must be set to correct any underutilization of specific affected classes of persons identified in a workforce utilization analysis. Grantees must conduct a detailed assessment of present employment practices to identify those practices that operate as employment barriers and unjustifiably contribute to underutilization. Employment practices include:

- recruitment
- selection
- promotion
- termination
- transfers
- layoffs
- disciplinary actions
- compensation and benefits
- training

An important part of any successful EEO program is an effective internal monitoring and reporting system. This system should:

- assess EEO accomplishments
- enable the evaluation of the program during the year
- enable the taking of necessary action regarding goals and timetables
- identify those units which have failed to achieve a goal or to implement affirmative actions
- provide a factual data base for future projections

Grantees should be able to demonstrate how their monitoring system has been implemented in order to address their stated areas of underutilization.

REFERENCE

FTA C 4704.1, Ch. III, Sections 2.d; e; f; and g

SOURCES OF INFORMATION

The grantee's EEO program update will be reviewed for information on the EEO goals and areas of underutilization. At the site visit, employment material and a copy of the most recent workforce utilization analysis will be examined for progress toward meeting EEO program goals. Efforts to not discriminate in employment practices will also be discussed, including outreach, and activities to positively impact areas of underutilization.

DETERMINATION

The grantee is deficient if a satisfactory explanation cannot be provided for goals that were not attained or the grantee cannot demonstrate that it is implementing or acting on its internal monitoring.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to develop and submit to the FTA RCRO a plan to meet its EEO goals, including a detailed assessment of present employment practices to identify those practices that operate as employment barriers and unjustifiably contribute to underutilization.

5. *Do any subrecipients or transit management/operations contractors meet the threshold for submission of a formal EEO program? If yes:*

- *Do the subrecipients or contractors have on file with the grantee an approved EEO plan?*
- *Does the grantee obtain program updates every three years? If no, provide an explanation.*

EXPLANATION

Subrecipients and contractors that receive capital or operating assistance in excess of \$1 million or planning assistance in excess of \$250,000 **and** employ 50 or more transit-related employees must submit to the grantee an EEO plan. Program updates are due every three years.

Note: In some circumstances, the RCRO may require grantees to submit the EEO program of a subrecipient or a contractor to FTA for review. If the grantee has a subrecipient or contractor that meets the employee threshold, additional guidance may be provided by the RCRO on the submittal of their program.

REFERENCE

[FTA C 4704.1](#), Ch. II, Section 2

SOURCES OF INFORMATION

During the desk review, information will be reviewed to determine whether any subrecipient or transit management/operations contractor receives capital or operating assistance in excess of \$1 million or planning assistance in excess of \$250,000 **and** has 50 or more transit-related employees. Assets, such as vehicles that have been purchased by the grantee for use by a subrecipient, are counted towards the subrecipient's threshold. The reviewer will ask if the subrecipients or contractors have approved EEO plans on file with FTA or if they are on file with the grantee. Additional information will be provided through grantee responses to the review package and the site visit.

DETERMINATION

The grantee is deficient if subrecipients and contractors who meet threshold requirements do not

have an approved EEO plan on file with the grantee (or with FTA if requested).

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to submit to the FTA RCRO documentation that it has reviewed and approved EEO plans from subrecipients and contractors that meet threshold requirements.

6. *Are there any EEO related complaints filed with the grantee, its subrecipients or its transit management/operations contractors concerning transit related employees? What is the status of the complaints?*

EXPLANATION

The number and nature of EEO complaints may indicate that the grantee or one of its subrecipients or contractors is not administering programs to comply with EEO.

REFERENCE

[FTA C 4704.1](#), Ch. VI

SOURCES OF INFORMATION

During the desk review, the reviewer will ask the RCRO whether the grantee or any of its subrecipients has EEO complaints filed with it. The nature of the complaints will be discussed. On site, discussions with the grantee will be held regarding any EEO complaints that are filed with it or its subrecipients or contractors in order to determine the nature of the complaints and the grantee's, subrecipients' or contractors' responses to them.

DETERMINATION

The grantee is deficient if there are EEO complaints filed against it concerning the FTA programs and it has not acted to investigate and resolve the complaints.

The grantee is deficient if there are EEO complaints filed against any subrecipients or contractors and the nature and number of complaints indicates that the grantee needs to improve its monitoring.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to advise the FTA RCRO of the resolution of the complaints filed against it.

The grantee will be directed to submit to the FTA RCRO procedures it has developed and implemented for improved monitoring of compliance by subrecipients and contractors with EEO requirements.

7. *Does the grantee's program ensure non-discrimination for ADA-eligible persons in terms of employment? Does the grantee have a policy and procedures for making reasonable accommodations for persons with disabilities? If requested, did the grantee make reasonable accommodations for persons with disabilities during the past three years, in accordance with Title I of the ADA? If yes, please describe.*

EXPLANATION

Grantees are required to not discriminate against persons with disabilities. Discriminatory acts include, but are not limited to, denying a person the opportunity for participation in or the benefit of a program and limiting, for a qualified person with physical or mental disability, the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

Grantees are required to not discriminate in employment and to make reasonable accommodations for qualified candidates with

disabilities hired by the grantee. Such accommodations could include modifications to telephone systems, computers, and office furniture.

REFERENCE

[49 CFR 27.7](#)

[49 CFR 27.19](#)

SOURCES OF INFORMATION

The reviewer will examine a copy of the grantee's reasonable accommodation policy, if written. At the site visit, the grantee's policy toward accommodating persons with disabilities will be discussed. The reviewer will ask the grantee to indicate if any persons with disabilities have requested reasonable accommodations since the last review and to describe reasonable accommodations made for qualified employees.

DETERMINATION

The grantee is deficient if the grantee has no process for making reasonable accommodations for persons with disabilities.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to submit to the FTA RCRO a process for making reasonable accommodations for persons with disabilities.